

REMARKS/ARGUMENTS

Claims 1, 4-12 and 12-41 are pending in the application. Amendments to claim 5, 17, 18, 20, 21 and 23 were made at the suggestion of the Examiner. Please note claim 20, previously withdrawn, is now pending. A two-month extension of time is concurrently requested with the submission of this amendment to extend the time for response from August 27 to October 27, 2008.

Claims 1, 4-7, 17, 18, 23-31 and 41 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 and 11-14 of copending Application No. 10/676,869.

Applicants acknowledge the Examiner's provisional double patenting rejection and will address such rejection should Examiner indicate allowable subject matter in this application.

Claims 1, 4, 5, 17, 18, 23, 24, 26, 27, 29 and 30 are rejected under 35 USC § 102(b) as being anticipated by Gan (U.S. Patent 5,964,807).

Gan is related to methods of reforming degenerated intervertebral discs including use of hybrid materials (Abstract). While Gan discloses several types of material suitable for use in intervertebral disc repair, Gan lacks the identical disclosure that the repair material be in the form of a strip. While the Examiner cites a definition for a strip as "a long narrow piece of a material", Gan lacks such a disclosure. Gans's disclosure of a rectangular shape is too general a description to read on a strip, for example, in paragraph 47 of the present application, the material 6 (the strip) is defined to:

"The material **6** of the invention is preferably a substantially two-dimensionally shaped structure (e.g., flat), that is the thickness is at least one order of magnitude lower than either the width or length, e.g., of a thickness

that will allow folding of the material in a length-wise and/or width-wise manner, such as a strip, or in the case of a flat, circular repair material, where the thickness of the circular material allows the material to fold.”

Furthermore Figs. 3 and 4 further illustrate what is claimed by depicting the shape of the material consist with what paragraph 47 describes.

Therefore, Applicants submit that the Examiner’s rejection is improper and should be withdrawn as Gan does not identically describe the invention as claimed by Applicant.

Claims 1, 4-7, 17 and 26 are rejected under 35 USC §102(e) as being anticipated by Bilbo (U.S. 2007/0250177).

Bilbo relates to tissue engineered prostheses made from processed tissue matrices derived from native tissue. (Abstract). While Bilbo discloses a flat sheet “trimmed into three or four smaller pieces” and its use in a discectomy as provided for in Example13, there is still no identical disclosure of the material used as being in a form of a strip as described and claimed in the present application. Therefore Applicants incorporate the arguments in response to Gan above, in response to the rejection in view of Bilbo.

Therefore, Applicants submit that the Examiner’s rejection is improper and should be withdrawn as Bilbo does not identically describe the invention as claimed by Applicant.

Claims 1, 4-7, 12, 14, 16-18 and 20-41 are rejected under 35 USC § 103(a) as being unpatentable over Gan (U.S. Patent 5,964,807), in view of Bilbo (U.S. 2007/0250177), Li (U.S. 6,764,514), Lim (WO 03/51239), and Moehlenbruck (U.S. Patent 6,723,335).

This rejection is respectfully traversed. While the Examiner relies on Gan for the reasons as noted above further arguing that it would be within the purview of one skilled in the art to manipulate the shape of the repair material, Gan’s disclosure is that the material “should

generally have a rectangular shape. A cylindrical pad shape is also envisioned.” (Col 9, lines 28-29). Absent from Gan’s description is the relative thickness of the material and reference to Fig. 1 does not illustrate a thickness that should allow to fold as explained by Applicant. It is therefore submitted that Gan does not in combination with the disclosure of Bilbo as noted above, provide the necessary disclosure or motivation to arrive at the strip as claimed by Applicants. Clearly neither Gan nor Bilbo appreciate the length and width to thickness criticality in Applicant's strip, needed to fold and twist as described in the application. Since the Examiner does not draw on the other cited references of Li, Lim and Moehlenbruck to further motivate one to manipulate the shape of an intervertebral implant material, the Applicants submit that the rejection is improper and should be withdrawn as it does not motive one to arrive as a strip having the length, width and thickness properties of a strip needed to fold and twist as described in the application.

Based on the foregoing, Applicants believe the application is now in condition for allowance. Favorable reconsideration and early notice of allowance are earnestly solicited. If any questions arise which can be disposed through interview, the Examiner is encouraged to contact Applicants’ attorney at the telephone number listed below.

Should additional fees be necessary in connection with the filing of this paper the Commissioner is hereby authorized to charge Deposit Account No. 10-0750/DEP5170USNP/TJS for any such fees. Applicants herewith petition for a two-month extension of time.

Respectfully submitted,

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